

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1901 (PCB BR 05-01) CS Slot Machine Gaming  
**SPONSOR(S):** Business Regulation and Representative Attkisson  
**TIED BILLS:** HB 1903 and HB 1905 **IDEN./SIM. BILLS:** SB 1174

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Business Regulation Committee	18 Y, 0 N	Staff	Liepshutz
1) Commerce Council	10 Y, 0 N, w/CS	Business Regulation Committee Staff	Bohannon
2) Fiscal Council		Belcher	Kelly
3)			
4)			
5)			

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### SUMMARY ANALYSIS

This bill creates the "Keep the Promise Act of 2005" and proposes a framework for the implementation of Article X, Section 23 of the State Constitution authorizing the operation of slot machines at certain existing pari-mutuel facilities in Broward and Miami-Dade Counties. Among its components, the bill creates a new Division of Slot Machines in the Department of Business and Professional Regulation and a 9-member State Slot Machine Gaming Board within the Division. The bill requires local law enforcement agencies to annually submit affidavits to the Board concerning the adequacy of funding levels relating to the impacts of slot machine gambling in their jurisdiction. Similarly, the bill requires local governments and local Tourist Development Councils to annually submit resolutions to the Board demonstrating slot machine gambling impacts on local communities and its impact on tourism and growth in local communities throughout the state.

The bill establishes the licensing and penalty framework for all entities involved in the operation of slot machine gambling. The proposal creates a definition for slot machines that mirrors the standards applicable to Class II machines in the federal Indian Gaming Regulatory Act.

The bill limits the number of machines that may be operated at a facility to no more than 3,000 per facility. The bill imposes a graduated tax rate based on the slot machine revenue: 35 percent on revenue of \$100 million or less; 40 percent on revenue greater than \$100 million but less than or equal to \$200 million; and, 45 percent on all revenue greater than \$200 million.

The bill imposes a \$1,500 per machine fee which will be distributed to the school board where the slot machine facility is located and is to be used to pay additional direct expenses incurred by the school board as a result of the addition of slot machine gaming in the community. The bill also provides that the City of Hollywood receive 0.5 percent of the slot machine revenue from three pari-mutuel facilities located within one mile of that city's borders.

The Revenue Estimating Conference has estimated that this bill will increase state revenues by an indeterminate amount in FY 2005-2006 and by \$224.6 million in FY 2006-2007. The bill will decrease local government revenues by an indeterminate amount in FY 2005-2006 and by \$2.3 million in FY 2006-2007.

The Governor's Office of Policy and Budget has estimated that the bill will cost \$13.6 million in FY 2005/06 and \$13.1 million in FY 2006/07 from the Slot Machine Administrative Trust Fund for regulation, oversight, licensing, and enforcement responsibilities preformed by state agencies.

The bill provides that the act will take effect July 1, 2005.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1901c.FC.doc  
**DATE:** 4/18/2005

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government; ensure lower taxes; safeguard individual liberty; promote personal responsibility; empower families; maintain public security:**

The bill implements Article X, Section 23 of the Florida Constitution, which authorizes slot machines within certain pari-mutuel facilities located in Broward and Miami-Dade Counties, contingent upon approval by local referendum.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background Information**

As a matter of constitutional law<sup>1</sup> and public policy, gambling has generally been prohibited in Florida. Chapter 849, F.S., provided the codification of this general prohibition policy and contains specific prohibitions against certain types of gambling and restrictions on possession of certain gambling devices for use in those activities e.g. roulette wheels, crap tables, slot machines, etc.

Certain other activities are prohibited by statutes that, while not gambling in the normal sense of the word, have been construed by the Legislature to be gambling. For example, ss. 849.091 and 849.0915, Florida Statutes, define chain letters, pyramid sales schemes and referral selling schemes as lotteries prohibited by law.

Chapters 24, 550 and 849, F.S., contain specific exceptions to this general prohibition against gambling and authorize gambling activities such as pari-mutuel wagering on horse and greyhound racing and jai alai games, cardrooms, bingo, and certain penny-ante card and domino games.

##### **Pari-mutuel Wagering**

The pari-mutuel wagering industry in Florida was once a gaming entertainment monopoly. Since the authorization of pari-mutuel wagering in 1931, Florida's pari-mutuel industry has developed into one of the largest and arguably the most complex in the country. Florida allows pari-mutuel wagering on thoroughbred and standardbred horses, greyhound racing, and jai alai games. From time to time, quarterhorse racing has also been conducted. Florida is the only state in the nation that conducts all these forms of pari-mutuel activities. During FY 2003-04, there were 30 pari-mutuel permit holders operating at 27 pari-mutuel facilities in the state: 18 greyhound permits; seven jai alai permits; four thoroughbred permits, and one harness permit.

Despite the introduction of simulcast wagering, numerous tax reductions and credits, and cardrooms, the pari-mutuel industry has seen a consistent decrease in revenue collections and attendance. Total state revenue has decreased from \$97 million in FY 1994-95 to \$34 million in FY 2003-04 and attendance at pari-mutuel events has decreased from 10 million in FY 1994-95 to 2.8 million in FY 2003-04.<sup>2</sup>

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<sup>1</sup> Article X, Section 7 of the State Constitution prohibits lotteries, other than the types of pari-mutuel pools authorized by general law on the effective date of the constitutional revision. Those activities understood to be pari-mutuel [horse and dog racing, jai ali games and bingo] were recognized as lotteries but if in existence and lawful under case law or legislative statutes prior to January 7, 1969, were grandfathered in as exceptions to lottery prohibition.

<sup>2</sup> 73<sup>rd</sup> Annual Report Fiscal Year 2003-2004, Division of Pari-Mutuel Wagering, Florida Department of Business and Professional Regulation, December 2004, page 14.

The industry now faces competition for discretionary entertainment dollars from a large array of other gambling venues: Indian gambling at several locations in Florida, unregulated Internet gambling, numerous gambling vessels, and the state-operated lottery.

### **Bingo, Cardrooms, and Raffles**

Chapter 849, F.S., sets the parameters under which bingo, cardrooms, and raffles may be conducted.

Bingo was authorized in 1967 to provide charitable, nonprofit and veterans' organizations a means to raise money for their charitable projects and activities. The statute establishes limits on the number of jackpots and the number of bingo sessions that may be conducted. Bingo may also be played by mobile home and condominium associations.

Pari-mutuel permitholders are authorized to operate cardrooms during their authorized meet. Initially capped at a \$10 pot limit, the cardroom statute was amended in 2003 to allow for a maximum bet of \$2 with no more than three raises in any round of betting. Cardroom receipts are taxed at 10 percent of monthly gross receipts and an admission tax equal to 15 percent of the admission charge is also imposed.

In a strict sense of the word, raffles are lotteries. Section 849.0935, F.S., allows charitable and nonprofit organizations, which are exempt from federal income taxation pursuant to s. 501(c)(3) of the Internal Revenue Code, to conduct drawings by chance for fundraising purposes. The Legislature passed s. 849.0935, F.S., in 1984, as an exception to the general prohibition against the conducting of a lottery. A key feature of this exception is that no donation or other payment can be required as a condition of participating in the raffle.

### **Cruise Ship Gambling**

Florida has fourteen deepwater ports and numerous marinas and docks, both public and private, from which ocean going vessels of all sizes operate. Many of these vessels offer cruises, of varying duration, to foreign ports. Eighteen [with another scheduled to begin operations] offer cruises which have no foreign port destination, but rather take passengers on cruises to the high seas [beyond the three-mile limit on the Atlantic coast and 9.1 miles on the Gulf coast] which last only several hours. These cruises are often referred to as *cruises-to-nowhere* or *day cruises*. In addition, a number of larger vessels operating from state ports engage in gambling activities when the vessels are outside of the territorial waters of the state.

Gambling is among the various entertainment options available on the larger vessels. It is typically the primary entertainment, other than food and beverage service, available on the smaller vessels.

On the Federal level, gambling vessels are regulated by the provisions of the "Johnson Act."<sup>3</sup> Before 1992, the Johnson Act provided a general ban on maritime gambling. Because foreign-flagged vessels were excepted, pursuant to the U. S. Justice Department's interpretation of the provision, U.S.-flagged vessels were operating at a competitive disadvantage. In order to allow U.S.-flagged vessels to compete with their foreign counterparts, the Johnson Act was amended in 1992. The amendment removed transport and possession restrictions regarding gambling devices, provided that those devices were not used while the vessel was within the boundaries of a state or possession of the United States.<sup>4</sup> Furthermore, the Johnson Act no longer prohibits the use of gambling devices outside of state boundaries, unless the ship is on a cruise-to-

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<sup>3</sup> Gambling Devices Transportation Act, 15 U.S.C. Sections 1171-1178.

<sup>4</sup> See s. 1175(b)(1)(A)-(B).

nowhere and the state in which that cruise begins and ends has enacted a statute “the terms of which prohibit use on that voyage.”<sup>5</sup>

## Internet Gambling

Gambling over the internet is illegal in Florida; however, policing the internet is technically difficult and complicated by jurisdictional differences. Some site operators have been prosecuted under the 1961 Wire Communications Act but case law on internet gambling is not well developed at this time. According to the General Accounting Office there are approximately 1,800 internet gambling operations, most of which are based outside of the United States. Gross gambling revenues [wagers minus customer winnings] from Internet gambling were estimated to be approximately \$4 billion nationwide for 2002. According to an industry study, estimates of internet gambling are subject to a high degree of uncertainty and may be underestimated.<sup>6</sup>

The island nation of Antigua filed a challenge before the World Trade Organization [WTO] in 2003 alleging that U.S. restrictions on internet gambling violated trade commitments the United States made as a member of the 148-nation Organization. In November 2004, the WTO issued a report agreeing that the ban represented an unfair trade barrier. According to the U. S. Trade Representative’s Office, Washington is prepared to vigorously contest the ruling before the WTO’s seven-member appeals body.

## Indian Gambling

Indian tribes are sovereign nations and, therefore, free from most federal and state governmental control. State laws, including those regarding gambling activities, do not generally apply to Indians or Indian lands without the consent of Congress. A significant expansion of Indian gambling was realized following passage of the Indian Gaming Regulatory Act<sup>7</sup> [IGRA] by Congress in 1988. IGRA provides that a tribe may only be engaged in those same type gambling activities as are authorized by law in that state. For example, if a state authorizes penny-ante poker, the tribes can, likewise, conduct poker; if the state specifically prohibits wagering on all card games, the tribe cannot conduct wagering on card games.

IGRA identifies three classes of gambling on Indian lands:

**Class I** includes social games and traditional and ceremonial games which may be played for prizes of minimal value. This type of gambling is under the exclusive jurisdiction of the tribes.

**Class II** includes bingo, pull tabs, and games similar to bingo, plus non-banking card games unless they are otherwise prohibited by state law. Class II gaming does not include any banking card games, including baccarat, chemin de fer, or blackjack, or electronic or electromechanical facsimiles of any games of chance or slot machines of any kind. Class II games may, however, utilize “electronic, computer or other technologic aids.” Class II gambling is subject to the provisions of IGRA and oversight by the National Indian Gaming Commission.

**Class III** includes all other types of gambling, including house-banked card games, slot machines, pari-mutuel racing and jai alai. Electronic games of chance, such as video poker, are also considered Class III games.

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<sup>5</sup> See s. 1175(b)(2)(A).

<sup>6</sup> *The Economic and Fiscal Impacts of “Slot Machines” in Miami-Dade and Broward County Pari-Mutuel Facilities*, Dr. Robert Cruz, August 2004.

<sup>7</sup> 25 U.S.C, chapter 29

The distinction between Class II and Class III games remains unclear as there is no “bright line test” to distinguish the two. As technology evolves, the distinction between the two will likely be further blurred.

According to IGRA, a tribe may legally conduct Class III gambling when it reaches agreement with a state under a State-Tribal Compact outlining the legal framework of the agreement. The State of Florida and its Indian Nations have been unable to reach agreement on a State-Tribal Compact. The Seminole Nation initiated negotiations on a gaming compact with the state and, when the tribe felt the state was not negotiating in good faith, filed suit in federal court.<sup>8</sup> The tribe won in the federal district court but lost in January 1994 in appellate court. While the appeals court upheld a state's sovereign immunity against suits, it also said a tribe could appeal to the Secretary of the Interior if the immunity defense prevented a tribe from negotiating a compact with a state. The case was reviewed by the U.S. Supreme Court, which rendered its opinion in March 1996. Basically, the court said that an Indian tribe could not sue a state in Federal court for an alleged failure of the state to negotiate a compact in good faith, i.e., the court found the states immune from suit under the 11th Amendment.

Left unanswered by the Court is the question of how Indian tribes are to pursue a remedy for a state's failure to negotiate in good faith. It is particularly unclear whether Congress must readdress the issue in new legislation or whether the Secretary of the Interior may unilaterally determine a tribe's right to engage in casino gaming within a particular state.

Apparently adhering to the belief that the Secretary of the Interior had the authority to do so, in April of 1999, rules were promulgated by the Department of the Interior, which would allow the licensing of Indian Class III gaming without a state's consent. Florida's Attorney General challenged the Secretary's authority for promulgating such rules in Florida's Northern District Federal Court. Currently, that case is pending, having been held in abeyance by the Court until such time as the Department of the Interior was actually poised to license a Florida tribe to engage in Class III gaming pursuant to the new rules. The administrative licensing process, upon which further action in the case turns, has also stalled.

The Seminole and Miccosukee Tribes currently operate tribal casinos in Broward, Collier, Glades, Hillsborough, Miami-Dade and Pasco counties where they offer gambling on various card games, bingo, and electronic bingo games. These electronic bingo games have been opposed by the state as unauthorized Class III games but have been classified by the National Indian Gaming Commission, an independent agency within the U. S. Department of the Interior responsible for implementing the Indian Gaming Regulatory Act, as Class II machines.

### **Border State Gambling**

Louisiana and Mississippi offer riverboat and shore-side casino gambling which are aggressively marketed to Floridians. Statistics on the number of Floridians that travel to those states to gamble at casinos is not readily available.

Currently, the State of Georgia offers the only border state lottery competition. The State of Georgia also participates in the “Big Game” lotto which is a multi-state, high-odds game with a beginning jackpot of \$5 million and a keno-styled game called “Quick Cash.” As a practical matter, competition from the Georgia Lottery is confined to certain border retailers.

### **Constitutional Amendments**

Article X, Section 7 of the State Constitution prohibits lotteries “other than the types of pari-mutuel pools authorized by law” as of the effective date of the constitutional revision [1968]. The

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<sup>8</sup> *Seminole Tribe of Fla. v. Florida*, 517 U.S.#44

recent adoption of two constitutional amendments has significantly altered the scope of gambling in the State of Florida.

### **Article X, Section 15 - State-Operated Lottery**

Adopted by the voters of the state in 1986, Article X, Section 15, authorized state-operated lotteries. The Florida Lottery was established by the Legislature in 1987, and codified as Chapter 24, F.S., in order to implement Article X, Section 15 of the State Constitution. The Department of the Lottery was also created at that time. The Lottery operates a number of on-line and instant ticket games and generated nearly \$1.2 billion dollars for the Educational Enhancement Trust Fund for FY 2003-04.

Section 24.121, Florida Statutes, requires that as nearly as practical, at least 50 percent of the gross revenue from the sale of on-line tickets and variable percentages of the gross revenue from instant tickets are to be returned to the public in the form of prizes. Each fiscal year, at least 39 percent of the gross revenue from the sale of on-line lottery tickets is deposited into the Educational Enhancement Trust Fund. Revenues transferred to the EETF shall be reserved as needed and used to meet the requirements of the documents authorizing the bonds issued by the state pursuant to ss. 1013.68, 1013.70, or 1013.737, F.S., or distributed to school districts for the Classrooms First Program as provided in s. 1013.68, F.S. Debt service payable on bonds issued by the state under these statutory provisions shall be payable from and is secured by a first lien on the first lottery revenues transferred to the EETF in each fiscal year.

### **Article X, Section 23 - Slot Machines**

Amendment 4 to the State Constitution was approved by the voters at the November 2004 General Election and the election results were formally certified by the Elections Canvassing Commission on November 14, 2004.

Passage of Amendment 4 authorized the governing bodies of Broward and Miami-Dade Counties to hold a county-wide referendum in their respective counties on whether to authorize slot machines within existing, licensed pari-mutuel facilities that have conducted live racing or games in that county during each of the last two calendar years before the effective date of the Constitutional Amendment [2002 and 2003].

Article X, Section 23, Florida Constitution reads as follows:

#### **SECTION 23. Slot machines.--**

(a) After voter approval of this constitutional amendment, the governing bodies of Miami-Dade and Broward Counties each may hold a county-wide referendum in their respective counties on whether to authorize slot machines within existing, licensed parimutuel facilities (thoroughbred and harness racing, greyhound racing, and jai-alai) that have conducted live racing or games in that county during each of the last two calendar years before the effective date of this amendment. If the voters of such county approve the referendum question by majority vote, slot machines shall be authorized in such parimutuel facilities. If the voters of such county by majority vote disapprove the referendum question, slot machines shall not be so authorized, and the question shall not be presented in another referendum in that county for at least two years.

(b) In the next regular Legislative session occurring after voter approval of this constitutional amendment, the Legislature shall adopt legislation implementing this section and having an effective date no later than July 1 of the year following voter approval of this amendment. Such legislation shall authorize agency rules for implementation, and may include provisions for the licensure and regulation of slot machines. The Legislature may tax

slot machine revenues, and any such taxes must supplement public education funding statewide.

(c) If any part of this section is held invalid for any reason, the remaining portion or portions shall be severed from the invalid portion and given the fullest possible force and effect.

(d) This amendment shall become effective when approved by vote of the electors of the state.

Both Broward and Miami-Dade Counties held local referendums on whether to authorize slot machines in their respective counties on March 8, 2005. Voters in Broward County approved the measure while voters in Miami-Dade County voted against authorizing slot machines at pari-mutuel facilities in that county. Voters in Miami-Dade County may vote on this issue two years following this initial vote.

There are four pari-mutuel facilities in Broward County: Dania/Summersport Jai Alai, Gulfstream Thoroughbred Park, Hollywood Greyhound Track and Pompano Park Harness that appear to qualify for the addition of slot machines gaming at their facility.

### **Debt Service on Bonds**

Article VII, Section 11 of the Florida Constitution authorizes the issuance of state bonds pledging the full faith and credit of the state and revenue bonds pledging all or part of a dedicated state tax revenue. The Division of Bond Finance in the State Board of Administration [SBA] has been the investment manager of the Florida Department of the Lottery since 1989, investing the funds into U.S. Treasury zero-coupon bonds. The SBA administers all debt service funds for bonds issued by the Division of Bond Finance on behalf of state agencies.

In s.1013.68, F.S.<sup>9</sup>, the Classrooms First Program, the state covenants with holders of bonds issued under that section that it will not take any action that would materially or adversely affect the rights of such bond holders so long as the bonds are outstanding. That statute further specifies:

“The State does hereby additionally authorize the establishment of a covenant in connection with the bonds which provides that any additional funds received by the state from new or enhanced lottery programs, video gaming, or other similar activities will first be available for payments relating to bonds pledging revenues available pursuant to s. 24.121(2), prior to use for any other purpose.” [Emphasis supplied.]

Resolutions authorizing the issuance of certain lottery revenue bonds by the Division of Bond Finance and the State Board of Education include a covenant regarding revenues from future gaming activities and specify:

“The Division covenants that new or enhanced lottery games will be operated by the Florida Department of the Lottery and any lottery revenues received by the State therefrom will be deposited into the Educational Enhancement Trust Fund or any successor to such trust fund as required by the Florida Constitution.

The Division further covenants that any net revenues received by the State from video gaming or any other similar activities, regardless of what entity operates these activities, will first be available for payment of

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<sup>9</sup> Similar language is also found in ss. 1013.70 and 1013.737.

debt service on the Bonds or other payments required pursuant to the Resolution prior to use for any other purpose.”

## **Florida School Board Association Agreement**

On October 22, 2004, the Florida School Boards Association entered into an agreement with the seven pari-mutuel facilities in Broward and Miami-Dade Counties wherein the pari-mutuel facilities agreed to pay to the Association 30 percent of the gross slot machine revenue generated at their respective facilities annually. The agreement specifies that the payments will commence upon passage of an authorizing referendum in the county of operation and upon the initial operation of slot machines by the facility and will continue until such time as the Legislature enacts legislation providing for the collection of taxes or fees on slot machine operations.

The agreement further provides that in the event the cumulative amount of tax imposed by the Legislature is less than 30 percent of the gross slot revenue generated by the facility, each facility is required to pay the amount of the difference between the two.

Revenues collected pursuant to this agreement are required to be distributed to each school board in the state in accordance with the respective percentage allocations of general revenue funds each school district is entitled pursuant to the Florida Education Finance Plan.

### **Effect of Proposed Change**

See SECTION DIRECTORY below for an explanation of the effects of the proposed changes contained in this legislation.

#### **C. SECTION DIRECTORY:**

**Section 1.** Specifies that the act shall be known by the popular name, “Keep the Promise Act of 2005.”

**Section 2.** Amends s. 20.165(2), F.S., to create a Division of Slot Machines [division] in the Department of Business and Professional Regulation [DBPR].

**Section 3.** Creates chapter 551, F.S., consisting of ss. 551.101, 551.105, 551.107, 551.1073, 551.1075, 551.108, 551.1091, 551.1111, 551.1113, 551.1115, 551.1119, 551.121, 551.125, 551.20, 551.202, 551.204, 551.25, 551.30, 551.33, 551.34, 551.341. and 551.40, relating to slot machines. [Chapter 550, F.S., relates to pari-mutuel wagering.]

#### **551.101 Slot machine gaming authorized.**

The bill tracks constitutional amendment language authorizing slot machine gaming and exempts slot machines from gambling prohibitions in general law.

#### **551.103 Definitions.**

The bill defines several terms, including:

“Slot machine” is defined to mean:

“...a gaming device, whether or not mechanical, electronic, computerized or other technological aids are used, that offers wagering on the game of bingo as defined in s. 849.0931, is owned by the slot machine licensee, and is capable of being linked to a centralized computer management system for regulating, managing, and auditing the operation, financial data, and program information, as required by the division.”

The definition further provides that a slot machine may be activated by the insertion of cash or coin and may dispense cash. The definition also includes a caveat that specifies that in the event a tribal casino operation in the state is allowed to offer Class III gaming machines, this definition will also encompass those machines.

“Mechanical, electronic, computerized or other technological aids” is defined to mean:

“...any machine or device that assists a player or the playing of a bingo game as defined in s. 849.0931 and broadens participating by allowing multiple players at one slot machine facility to play with or against each other in a bingo game for a common prize or prizes. Such aids may use alternative displays, including but not limited to, a simulation of spinning reels, to illustrate aspects of the game of bingo such as when a player joins the game or when prizes have been awarded, as long as such aid continuously and prominently displays the electronic bingo card so that it is apparent that the player is actually engaged in the play of bingo. Such aids shall not:

- (a) Determine or change the outcome of any game of bingo;
- (b) Be an electronic or electromechanical facsimile that replicates a game of bingo; or
- (c) Allow players to play with or against the machine or house for a prize.”

“Electronic or electromechanical facsimile” is defined to mean:

“...a game played in an electronic or electromechanical format that replicates a game of chance by incorporating all of the characteristics of the game, except when, for bingo, the electronic or electromechanical format broadens participation by allowing multiple players to play with or against each other rather than with or against a machine.”

“Slot machine licensee” is defined to be one who is the pari-mutuel permitholder and holds the actual license authorizing slot machine gaming and “slot machine occupational licensee” as all other categories, e.g. manufacturers, distributors, service and repair technicians, employees, etc.

“Slot machine revenues” means the total of all cash and property received by the slot machine licensee from slot machine gaming operations less the amount of cash, cash equivalents, credits, and prizes paid to winners of slot machine gaming.

### **551.105 Division of Slot Machines; powers and duties.**

The division is given rulemaking authority for licensure and tax collection. Included in such rules are provisions requiring each licensee to post a \$2 million performance bond. The bond may be reviewed for adequacy by the division annually but in no case will it be reduced below \$2 million. Real-time electronic data collection and reporting capabilities are required to ensure the accurate reporting of taxes. The division is required to consult with the Department of Revenue [DOR] and may enter into an interagency service agreement with the DOR or may contract with private providers to accomplish the most cost-effective means of developing and maintaining the centralized management reporting and taxation system

Division rules must also address the payout percentage of slot machines which shall be no less than 85 percent and no more than 93 percent per facility.

The bill also grants unrestricted access to premises and authority to inspect, collect taxes, examine records, etc., requires strict compliance with laws by slot machine licensee; allows the

division to deny, revoke, suspend or place conditions on licenses; and requires the division to revoke or suspend the license of an entity no longer qualified.

The bill grants law enforcement authority to division employees and agents. The bill also requires the division to investigate criminal violations of this chapter and provides that the division may conduct investigations of criminal violations occurring on the facilities of a slot machine licensee in conjunction with the appropriate state attorney and law enforcement agency. The bill clarifies that the authority granted to the division in this regard does not prohibit any local law enforcement agency whose jurisdiction includes the slot machine facility from conducting criminal investigations for violations occurring at the facility or restrict access to the facility or to information or records necessary to conduct such an investigation.

#### **551.107 License to conduct slot machine gaming.**

This section provides general licensing requirements, such as: the slot machine license may only be issued to a licensed pari-mutuel permit holder in a county that has voted to allow slot machine gaming; slot machine gaming may only be conducted at the same facility authorized for pari-mutuel wagering; and the applicant must show that the authority for slot machine gaming has not been rescinded in that county.

The bill also establishes as a condition of licensure that the licensee must: continue to be in compliance with this chapter and chapter 550 and conduct no fewer than the greater number of live events conducted in 2002 or 2003 [these dates are referenced in the constitutional amendment]. The bill contains an "Act of God" provision which specifies that the number of required live races or games may be reduced by the number of lives races or games which could not be conducted as a direct result of fire, war, or other disaster or event beyond the ability of the permit holder's control.

Also, in order to expedite the slot machine operations at eligible facilities, the bill allows a facility to reduce the number of required performances for 2005-06 by allowing the facility to amend its 2005-06 pari-mutuel wagering license. The requested changes must be made within 60 days of the effective date of this act and must be granted by the Division of Pari-mutuel Wagering.

The bill requires the licensee to be responsible for maintaining and providing current and accurate information of any changes relating to qualifications for the license and requires the licensee to submit a security plan.

The bill allows for the operation of up to 3,000 slot machines per facility and provides that a slot machine license is not transferable.

#### **551.1073 Slot machine license renewal.**

The bill provides for annual renewals and requires certain information and attestation by the licensee that certain changes do not affect applicant's qualifications for renewal.

#### **551.1075 Payment of taxes; determination and certification of payment of state and local taxes.**

This provision requires a slot machine licensee to maintain a "certificate of status" by the Department of State evidencing that the corporation is in existence and authorized to conduct business in Florida. The Department of Revenue is required, on or before July 31 of each fiscal year, to certify to the Governor that a slot machine licensee is current with regard to all state or local taxes. This section reiterates that the division must revoke, suspend or refuse to renew a slot machine license if the licensee is delinquent in the payment of taxes due the state as a result of its pari-mutuel or slot machine operations.

### **551.108 License fee; per machine tax; and tax rate.**

The bill imposes an initial \$2.5 million annual license fee per slot machine license which fee is to cover the cost of operation of the division. The fee is required to be deposited in the Slot Machine Administrative Trust Fund. The bill requires recommendations by the division to be submitted to the Legislature prior to January 1, 2006, relating to regulatory costs and appropriate fee levels.

On January 1 of each year, a local education supplemental slot machine tax of \$1,500 per machine is imposed at each facility in a county where slot machine gaming is authorized. The fee must be paid no later than March 1st of that year and the division must deposit the revenue into the Educational Enhancement Trust Fund on or before July 1st. These revenues must be distributed to the school district where the slot machine facility is located no later than August 1<sup>st</sup> and may be used by the school district to pay additional:

- Supplemental public education instruction expenses;
- Construction of classroom and school facilities expenses;
- School safety expense; or
- Educational infrastructure expenses.

The bill requires an audit by the Department of Education and requires that any funds received by the school district in excess of the amount of additional direct expenses shall be returned to the Educational Enhancement Trust Fund within 90 days of completion of the audit.

The bill imposes a graduated tax rate based on the slot machine revenue:

- 35 percent on revenue of \$100 million or less;
- 40 percent on revenue greater than \$100 million but less than or equal to \$200 million; and
- 45 percent on all revenue greater than \$200 million.

These tax revenues are to be deposited unallocated to the Educational Enhancement Trust Fund.

The bill imposes a \$1,000 per day administrative penalty for failure to make tax payments. Fines are to be deposited into the Slot Machine Administrative Trust Fund. The division may suspend or revoke a slot machine license for failure to pay penalties. Willful or wanton failure to pay the tax constitutes sufficient grounds for revocation of the license.

The bill authorizes the division to require electronic funds transfer of payments.

### **551.1091 Occupational license required; application; fees.**

The bill requires persons associated with the slot machine operations, such as manufacturers, distributors, management companies, repair technicians, etc. to possess a slot machine occupational license and the slot machine licensee may not employ or conduct business with anyone who does not hold a license.

The bill authorizes the division, by rule, to establish required information from applicants. It requires a Level II FBI fingerprint/background check upon initial application and every five years thereafter. Food service, maintenance and other service or support employees with a current pari-mutuel occupational license and current background check are not required to obtain an additional background check.

Standards for disqualification include a felony or misdemeanor involving gambling, bookmaking, forgery, larceny, extortion, conspiracy to defraud, or filing false reports, etc.

The bill establishes occupational license fees in the amounts not to exceed \$50 for general or professional employees of the slot machine licensee and not to exceed \$1,000 for a business occupational license. Slot machine licensees are required to pay the cost of the license fees for their general occupational license holders. Revenues collected from occupational license fees are required to be placed in the Slot Machine Administrative Trust Fund.

**551.1111 Prohibited relationships.**

The bill prohibits division employees from being employed by anyone licensed by the division or holding any interest in the business of anyone licensed by the division; revenue sharing based on a percentage of slot machine revenues between a slot machine licensee and manufacturers or distributors; and a manufacturer, distributor, etc. is prohibited from having any ownership or financial interest in a slot machine licensee or business owned by a slot machine licensee.

**551.1113 False statements; skimming of slot machine proceeds; cheating; theft; arrest and recovery; penalties.**

The bill enumerates prohibited acts and penalties including that making false statements in any report, disclosure, or application is a first degree misdemeanor and skimming of slot machine proceeds or cheating by a customer or an employee is a third degree felony.

This provision allows a law enforcement officer or the slot machine operator who has probable cause to believe a theft has occurred to take a person into custody and detain the person in a reasonable manner and for a reasonable time. If the slot machine operator detains a person suspected of theft the slot machine operator is required to call a law enforcement officer to the scene immediately. This section allows a law enforcement officer to arrest a person, either on or off the premises and without warrant, upon probable cause.

The section provides that any person who resists the reasonable effort of a law enforcement officer or slot machine operator to recover lost slot machine revenue commits a first degree misdemeanor.

**551.1115 Slot machines; authorization.**

The bill specifically exempts slot machines possessed or operated under this chapter from other prohibitions in general law.

**551.1119 Facilities of slot machine licensees.**

The bill allows the division to exclude certain persons from a slot machine facility for conduct that would constitute, if the person were a licensee, a violation of chapter 551 or rules of the division.

The bill requires posting of signs warning of the risks and dangers of gambling, showing the odds of winning, and a toll-free number for information and referral services relating to compulsive or problem gambling.

The bill requires slot machine licensees to provide equipment in the slot machine gaming area sufficient to allow the observation of and wagering on live, intertrack and simulcast pari-mutuel races and games.

**551.121 Minors prohibited from playing slot machines.**

No slot machine licensee shall allow a person under 21 to play a slot machine, be in the slot machine gaming area, or be employed in a position allowing or requiring access to the slot machine gaming area.

### **551.125 Prohibited activities and devices.**

The bill specifies complimentary alcoholic beverages may not be served to patrons within the designated slot machine gaming areas. In addition the bill prohibits loans, credit or cash advances by a licensee to customers and provides that ATMs or similar devices may not be located within 50 feet of a designated slot machine gaming area.

### **551.20 Days and hours of operation.**

Slot machine gaming may be conducted fourteen hours per day between 10:00 AM and 2:00 AM and may be conducted 365 days per year.

### **561.202 Catering license.**

The bill authorizes the issuance of a caterer's license allowing the sale and service of alcoholic beverages on days the facility is open to the public for slot machine gaming.

### **561.204 Purchasing and employment by slot machine licensee.**

The bill requires slot machine licensees to maintain a policy of making purchases from Florida vendors and awarding preference in employment to Florida residents. In addition, the bill directs slot machine licensees to use the Internet-based job listing system of the Agency for Workforce Innovation in advertising employment opportunities and to create equal employment opportunities for women, Asians, blacks, Hispanics, Native Americans, persons with disabilities, and other protected groups.

### **551.25 Penalties.**

The bill allows suspension or revocation of a license for willful violations or imposition of a civil penalty in an amount up to \$1,000 for each offense. Penalties are deposited into the Slot Machine Administrative Trust Fund.

### **551.30 State Slot Machine Gaming Board.**

The bill creates the State Slot Machine Gaming Board (board) within the Division of Slot Machines at DBPR whose stated purpose includes: providing administrative advisory oversight to the division; monitoring the impacts of slot machine gaming in the affected communities and the state as a whole; and, ensuring that the intent of the constitutional amendment is met as it relates to the expenditures of taxes on slot machines to supplement public education.

The board is comprised of 9 voting members who serve without compensation with the Director of the Division of Slot Machines serving as an ex-officio, nonvoting member. The Governor appoints members with Senate confirmation.

The bill establishes the powers and duties of the board to:

- Receive and review reports and financial documentation provided by slot machine licensees and monitor compliance with this act;
- Receive testimony and information from law enforcement officials regarding criminal activity in and around slot machine facilities;
- Receive testimony and information from local governments and tourist development councils regarding the impact of slot machine gaming on their communities and tourism in their respective areas;

- Make recommendations to the division and to the Office of Program Policy Analysis and Government Accountability on performance measures for the regulatory responsibilities set out in chapter 551;
- Monitor criminal activity in and around slot machine facilities and make recommendations to the Legislature on ways to curb any such activity;
- Receive testimony regarding the expenditures of taxes received from slot machine gaming and make recommendations to the Legislature on ways to spend these funds to supplement public education; and
- Prepare an annual report.

The board is required to make recommendations on reporting requirements for slot machine gaming facilities including the means, method, and timing of reporting in the following areas:

- The net number and dollar value of jobs created;
- The total net revenues generated from all tax and fee sources;
- Measures taken by slot machine licensees to prevent, control and treat problem gambling;
- The operational status and quality of operation of the licensee's preslot machine pari-mutuel enterprise;
- Documentation of continuing capital reinvestment by the licensee for the economic benefit of the community;
- Information relating to complaints and charges of violations constituting a nuisance and the outcome of those charges; and
- A detailed summary of all lobbying activities conducted by or on behalf of the slot machine licensee, including the amount and source of funds expended.

The board is required to prepare an annual report by December 1<sup>st</sup> of each year of activities and outcomes of the slot machine licensees, including:

- A description of the public testimony received by the board;
- A description of any resolutions from county or municipal governments or tourist development councils or affidavits from law enforcement officials received by the board;
- Information on the number and salary level of jobs created;
- Information on the amount and nature of economic activity generated through related activities;
- A compliance and financial audit of the accounts and records of the board; and
- A description of any recommendations made to the division or the Legislature.

The bill requires a program performance audit of the board, the division, and slot machine licensees by OPPAGA by January 1, 2008, and annually thereafter. The audit shall include an evaluation of reports and financial documentation provided to the board by the slot machine licensee, law enforcement officials, local governments, and tourist development councils.

### **551.33 Law enforcement affidavits.**

The bill requires annual affidavits to be submitted to the board from local law enforcement agencies that are in or near the boundaries of slot machine gaming facilities. The statements should reflect funding levels for law enforcement relating to impacts of slot machine gaming.

### **551.34 Local government resolutions.**

The bill requires local governmental bodies, in proximity to slot machine gaming facilities, to adopt and submit to the board an annual resolution demonstrating slot machine gaming impacts on local communities. Local governments that are not required to adopt resolutions under this section are also allowed to submit resolutions containing a recitation of those factual

circumstances which support a conclusion that slot machine operations have a substantial effect on the public economic and social health, safety, and welfare of the municipality.

#### **551.341 Tourist development council resolutions.**

The bill requires a local Tourist Development Council [TDC], or Board of County Commissioners if there is no TDC in that county, to adopt a resolution addressing the impacts on tourism growth and expansion in local communities throughout the state as a result of slot machine gaming. The resolution must contain statistical data and other practical collateral impacts and evidence on local tourism activity and be provided to the board annually.

#### **551.40 Compulsive gambling program.**

The bill requires the Mental Health Program Office at the Department of Children & Family Services in conjunction with the Department of Education to establish a program for public education, awareness, training and treatment of problem and compulsive gambling.

The program must include: maintenance of toll-free hotline to provide crisis counseling and referral services; the promotion of public awareness regarding recognition and prevention of problem gambling; facilitation of the availability of effective assistance programs; and studies to identify at-risk adults and juveniles.

**Section 4.** The bill creates a new subsection (2) in s. 849.15, F.S., to create an exception to the state and federal prohibition on possessing or transporting slot machines in the state as long as the slot machines are destined for a licensed eligible slot machine gaming facility.

**Section 5.** The bill amends the definition of "racketeering activity" in s. 895.02,(1) F.S., to include any of the violations specified in s. 551.1113, F.S., such as making false statements, skimming of proceeds, and cheating.

**Section 6.** The bill creates an undesignated section in the Florida Statutes that requires each licensee located within one mile of a municipality that does not have a slot machine licensee geographically located within its municipal borders to pay one-half of one percent of their slot machine revenues to that affected municipality. This provision appears to apply to the City of Hollywood and to the Dania Jai Alai, the Hollywood Greyhound Track, and Gulfstream Park pari-mutuel facilities.

**Section 7.** Effective date of July 1, 2005.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The Revenue Estimating Conference has estimated that the provisions of this bill will have the following impacts on state revenues:

(\$ in millions)	FY 2005-06 Annualized	FY 2005-06 Cash	FY 2006-07 Cash
General Revenue-Sales Tax	(29.6)	(Indeterminate)	(22.9)
State Trust:			
Sales Tax	(.1)	(Indeterminate)	(.1)
EETF slots	324.1	Indeterminate	244.3
EETF lottery	(24.8)	(Indeterminate)	(19.2)
Slot Machine Administrative TF Facility license	6.4	10.0	6.4
Slot Machine Administrative TF Machine license	18.0	Indeterminate	16.1
Slot Machine Administrative TF Occupational Licenses	Indeterminate	Indeterminate	Indeterminate
Total State Impact	294.0	Indeterminate	224.6

## 2. Expenditures

The following fiscal impact information was provided by the Governor's Office of Policy and Budget for regulation, oversight, licensing, and enforcement responsibilities. Also see D. Fiscal Comments.

	<u>Positions</u>	<u>FY 2005/06</u>	<u>FY 2006/07</u>
Operating:			
Office of the State Attorney			
Trust Funds	10	\$ 182,652	\$ 608,118
Florida Department of Law Enforcement (FDLE)*			
Trust Funds	57	\$ 4,449,265	\$ 4,297,147
Department of Business & Professional Regulation			
Slot Machine Administrative Trust Fund	64	\$ 8,990,748	\$ 6,171,503
Non-Operating:			
Department of Business & Professional Regulation			
Transfer to Office of the State Attorney		\$ 182,652	\$ 608,118
Transfer to FDLE *		\$ 4,449,265	\$ 4,297,147
Service Charge to General Revenue		\$ 0	\$ 730,000
Departmental Overhead		\$ 0	\$ 1,322,011
Total – Non-Operating			
Slot Machine Administrative Trust Fund		\$ 4,631,917	\$ 6,957,276
Total – Slot Machine Administrative Trust Fund		\$ 13,622,665	\$ 13,128,779

\* See D. Fiscal Comments related to State Law Enforcement Costs.

## B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

### 1. Revenues:

The Revenue Estimating Conference has estimated that the provisions of this bill will have the following impacts on local government revenues:

(\$ in millions)	FY 2005-06 Annualized	FY 2005-06 Cash	FY 2006-07 Cash
Non-Host Municipal Revenue Sharing	3.2		2.5
Sales Tax Revenue Sharing	(1.0)		(.8)
Sales Tax Local Gov't Half Cent	(2.6)		(2.0)
Sales Tax Local Option	(2.6)		(2.0)
Total Local Impact	(3.0)	(Indeterminate)	(2.3)

To assist in defraying the cost of local government impacts, including the effects upon quality of life and community values, costs, and expenses that will be incurred as a result of the pari-mutuel facilities' development and operation of slot machines, Broward County has entered into written agreements with the four pari-mutuel facilities located in the county. In addition to payments to the county for county-wide impacts, the agreements provide for payments to the county that will be distributed to the municipalities where the facilities are located. The payment percentages are as follows per facility: 1) For county-wide impacts, 1.5 percent of the first \$250 million in slot machine revenues and 2.0 percent of revenues above \$250 million; and, 2) For the municipalities where the facilities are located, 1.7 percent of the first \$250 million in slot machine revenue and 2.5 percent above \$250 million.

2. Expenditures:

Local governments including Broward county, municipalities where the facilities are located, and nearby counties and municipalities may incur increased expenditures to meet additional needs related to law enforcement, transportation, and human services. The expenditures required to meet those needs are not quantifiable at this time.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The degree to which private individuals or businesses (including Indian gaming facilities, cruises-to-nowhere, and tourist destinations and attractions) located nearby the slot machine gaming facilities or located throughout the state will benefit or be harmed economically by the presence of slot machine gaming in Broward County does not appear quantifiable at this time.

D. FISCAL COMMENTS:

By the terms of Amendment 4, any state revenue from the taxation of slot machines must be used for supplementing public education funding statewide. Revenues from the taxation of slot machine revenue may be required to be deposited in the Educational Enhancement Trust Fund to be available first for debt service payments on bonds issued under the 1997 School Capital Outlay Bond Program, the Classrooms First Program, and the Class Size Reduction Lottery Revenue Bond Program pursuant to ss. 1013.70(1), 1013.68(4), and 1013.737(3), F.S., respectively. All of those subsections authorize the establishment of covenants in connection with the issuance of bonds that provide that any additional funds received by the state from new or enhanced lottery programs, video gaming, or other similar activities will first be available for payments relating to the bonds, prior to use for any other purpose. The Resolutions of the Division of Bond Finance of the State Board of Administration which appear in the Official Statements related to the issuance of bonds under those programs contain covenants with the registered owners that any net revenues received by the state from video gaming or other similar activities, regardless of what entity operates these activities, will first be available for payment of debt service on the bonds or other payments required pursuant to the Resolution prior to use for any other purpose. However, the applicability of these covenants to *tax* revenue derived from slot machine gaming in pari-mutuel facilities may be called into question, since Article VII, Section 11(d), of the Florida Constitution provides that "revenue bonds may be issued by the state or its agencies without a vote of the electors to finance or refinance the cost of state fixed capital outlay projects authorized by law, and purposes incidental thereto, and shall be payable solely from funds derived directly *from sources other than state tax revenues.*" [Emphasis supplied.]

The Department of Revenue has noted that the bill may present additional tax consequences if slot machines are construed to fall within the definition of "coin-operated amusement machines," which are subject to a four percent sales tax under s. 212.05(1)(h)1., F.S. The department suggests the term "slot machine" should be defined to specify whether they are subject to such tax.

Section 6 of the bill imposes a payment of 0.5 % of slot machine revenues to certain municipalities within one mile of multiple slot machine licensees. Whether this comports with the requirement of Amendment 4 that funds raised from the taxation of slot machine revenue must be spent for public education statewide is questionable.

State expenditure comments:

Costs to the state are expected to increase due to regulatory, oversight, and licensing requirements. The bill creates a new Division of Slot Machines within the Department of Business and Professional Regulation [DBPR] with regulatory, oversight, and licensing responsibilities. In addition, the bill creates the State Slot Machine Gaming Board to be housed within the new division and requires the division to provide staff support for the board's activities.

DBPR has made a preliminary determination of the expenditures that will be necessary to implement the provisions of the bill. DBPR estimates that for FY 2005-06 the total annual costs for the new Division of Slot Machines to fulfill its responsibilities under the bill would be approximately \$10.2 million of which approximately \$6.2 million would be recurring and \$4 million non-recurring. Due to the need for rule making, process and system development, the positions will be phased in during FY 2005-06. The anticipated need based on the phase in is \$8.8 million in operating budget of which \$4 million is non-recurring. In addition, \$2.1 million will be needed in non-operating authority for the service charge to general revenue and administrative trust fund assessment for a total cash need of \$10.9 million.

Recurring cost for the operations of the division for the next two fiscal years (FY 2006-07 & FY 2007-08) would be approximately \$6.4 million each year. The yearly recurring costs are primarily comprised of approximately \$4.4 million for salaries, benefits, expenses, and operating capital outlay associated with 64 FTE positions (57 professional & 7 support positions), \$0.3 million for State Slot Machine Gaming Board expenses, \$0.5 million for central monitoring system maintenance, and \$0.5 million for contract servicing and technical testing. A major portion of the first year non-recurring costs of \$4 million consists of \$3 million for development, testing and implementation of a central monitoring system and \$0.6 million for reconfiguration and expert witness fees. Of the 64 FTE, 57 will be assigned to the Division of Slot Machines, four to the General Council's Office, and three to the Service Operations Division. In order to achieve the most cost-effective centralized management and taxing system, the bill provides that DBPR must consult with the Department of Revenue [DOR] in regard to the development and maintenance of the system. Further, it authorizes DBPR to contract with DOR or enter into service agreements, or to contract with private providers for developing and maintaining the system.

In addition to regulatory costs associated with slot machine operations, the state can expect an increase in costs related to problem gambling, which could lead to a need for increased expenditures in several areas, including law enforcement (including impacts on the courts and prisons), as well as mental health and addiction treatment costs, among others.

State Law Enforcement Costs:

Comments provided by FDLE

"In anticipation of slot machines becoming legalized in Florida, FDLE staff has reviewed the enacting legislation, structures, duties and responsibilities of other States with legalized casino gambling. Staff has also reviewed statistics with regard to number and types of crime typically associated with casino gambling operations in other States, including New York, Minnesota, Connecticut, New Jersey, Arizona, California, and Nevada. Although states have approached organizational structure, duties and responsibilities in varying ways, it is clear that the legislative issues and ancillary crimes associated with a casino operation will require significant state and local resources to maintain the integrity of the operations, ensure a safe gaming environment, and protect State assets. Based on the research from other

state's experiences, this report outlines the estimated human resource staffing and other costs that will be associated with FDLE's enforcement related duties for the four racinos in Broward County. Depending on the scope of the statutory requirements, operational hours of the racinos and the role of other agencies in racino regulation and enforcement, additional resources may be required. Estimates included are based on limited information and additional information will be forwarded as it is developed."

Law enforcement responsibilities continue to be refined and clarified. Costs should be updated as information becomes available.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill requires each Tourist Development Council, or Board of County Commissioners if there is no Tourist Development Council, to adopt a resolution at least annually that expresses whether slot machine gaming is being operated in a manner that demonstrates a commitment to the growth and expansion of tourism in this state and a commitment to ameliorate detriment to communities that are current tourist destinations but do not have slot machine gaming being conducted within their jurisdiction. The resolution is required to contain a recitation of those factual circumstances which support a conclusion that the operations of slot machine licensees have a substantial positive or negative effect on the expansion and growth of tourism within their jurisdiction. Impacts are required to be supported by statistical data and other practical collateral impacts and evidence on local tourism activity. While this provision would require counties to spend money or take an action which requires the expenditure of money and therefore would constitute a local mandate, the bill is exempt from the requirements of Article VII, Section 18(a) because the required expenditures, in the aggregate, would have an insignificant fiscal impact.

This bill does not reduce the authority that cities or counties have to raise revenues in the aggregate. This bill does not reduce the percentage of a state tax shared with cities or counties.

##### 2. Other:

The question has arisen whether restricting pari-mutuel facilities to Class II gaming machines as defined under federal law comports with the authorization of "slot machines" under Amendment 4. The Indian Gaming Regulatory Act [IGRA] includes within the gambit of Class II gaming, non-banked card games and bingo, including related games such as pull-tabs and lotto, for example.<sup>10</sup> Bingo games can use "electronic, computer or other technologic aids." Class II machines, although designed to outwardly mimic Class III machines, are essentially configured by being linked together so that the players are playing bingo against one another instead of playing against the machine as is the case with Class III machines, often referred to as "Vegas-style" slot machines. Federal law under the IGRA, specifically excludes from the Class II gaming category slot machines of any kind which by definition fall within the Class III gaming category and which, therefore, require a compact between an Indian tribe and the state.

In contrast to the IGRA, current state law prohibits slot machines broadly by defining a slot machine as essentially any machine or device that is adapted for activation by a coin or other thing of value that when activated by a player may, by the element of chance, entitle a player to something of

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<sup>10</sup> See 25 U.S.C., sec. 2703.

value.<sup>11</sup> Thus, Class II machines would appear to fit within the broad parameters of the state definition of slot machines. However, a recent Advisory Opinion to the Attorney General by the Florida Supreme Court during the Court's review of proposed constitutional Amendment 4 calls into question whether Class II bingo-type machines fall within the ambit of the term "slot machines" for purposes of the amendment.<sup>12</sup>

In arguing that Amendment 4 violated the single-subject requirement, the Attorney General contended that slot machines in pari-mutuel facilities would constitute lotteries, and, therefore, the amendment would have the effect of amending the two current Lottery provisions of the Florida Constitution without notice of such effect. The two existing provisions of the Constitution prohibit lotteries, except those pari-mutuel pools authorized by law as of the effective date of the Constitution and the Lottery operated by the State. Relying on prior case law and statutory law, the Court found that a slot machine is not a lottery and, therefore, the amendment did not amend the lottery provisions of the Constitution. The Court's determination is important, because the Court has also held that bingo is a lottery which is not prohibited by the Constitution because it was authorized at the time of the adoption of the 1968 Constitution.<sup>13</sup> Thus, it could be argued that if slot machines are not a lottery, then Class II machines that are designed to play bingo, which is a lottery, are not the type machines contemplated by Amendment 4.

Article II, Section 3 of the Florida Constitution provides, "No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." This stricture is the basis for challenging, as unlawful, legislative delegations of authority to agencies and private organizations, especially when those agencies or individuals are given policy-related discretion over the content of law. The provision of the bill defining slot machines provides that the term "slot machine" shall also encompass Class III machines contingent upon tribal casinos in the state becoming entitled by compact or law [presumably, federal law] to Class III machines. This provision may arguably be susceptible to challenge as an unlawful delegation of legislative authority.

Section 6 of the bill imposes a payment of 0.5 % of slot machine revenues to certain municipalities within one mile of multiple slot machine licensees. Whether this comports with the requirement of Amendment 4 that funds raised from the taxation of slot machine revenue must be spent for public education statewide is questionable.

#### B. RULE-MAKING AUTHORITY:

The Division of Slot Machine Gaming is granted significant rule-making authority under the provisions of this legislation.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None noted.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 14, 2005, the Commerce Council considered HB 1901 and voted to report the bill with committee substitute. Among its provisions, the amendment:

- Provides that slot machine facilities can have Class III type machines if Indian Tribes become entitled to Class III gaming by compact or other law;
- Allows machines to receive or pay out in cash;
- Changes payout to a range of 85% to 93%;

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<sup>11</sup> See ss. 849.15 & 849.16, F.S.

<sup>12</sup> *Advisory Op. to the Att'y Gen. re: Authorizes Miami-Dade and Broward County Voters to Approve Slot Machines in Parimutuel Facilities*, Case No. SC04-1057, July 15, 2004.

<sup>13</sup> *Greater Loretta Improvement Association v. State ex rel. Boone*, 234 So.2d 665 (Fla. 1970).

- Creates a graduated tax rate on machine revenue ranging from 35% to 45% depending on revenue amounts rather than a tax rate based on the number of machines;
- Requires DOR to certify that slot machine licensees have paid all state and local taxes;
- Requires the \$1,500 per machine funds paid to Broward County School Board to be returned to the EETF if not an expense directly related to slot machine operations rather than be refunded to the slot machine licensee;
- Specifies the hours of operation as between 10:00 AM and 2:00 AM daily and allows operation 365 days per year rather than 14 hours per day Monday through Friday and 24-hours per day on Saturday and Sunday;
- Provides that the number of live events required to conduct slot machine gaming may be reduced by the number of days that a licensee is prevented from conducting live events due to an act of God;
- Authorizes pari-mutuel licenses to be amended within 60 days after the effective date of the act;
- Requires that at least a \$2 million bond be purchased by the slot machine licensee to ensure payment of all revenues due to the state and authorizes the bond to be adjusted upwards but not below \$2 million;
- Raises the age of persons who can play, have access to, or be employed in a designated slot machine gaming area to 21 years old instead of 18 years old;
- Prohibits complimentary alcohol being provided to patrons in the designated gaming area;
- Provides authority for issuance of an alcoholic beverage caterer's license;
- Requires DBPR to consult with DOR regarding the development and maintenance of a central management system and authorizes DBPR to contract with DOR or enter service agreements as well as privately contract;
- Clarifies the division's law enforcement jurisdiction and local law enforcement jurisdiction;
- Adds certain criminal offenses created in the bill to the list of crimes that can serve as the underlying offense in a racketeering prosecution under RICO;
- Removes the requirement for submission of an operational plan;
- Removes referenda requirement relating to declaring slot machine operations an undue burden to the community; and
- Requires 0.5 percent of slot machine revenues to be paid to the City of Hollywood by two slot machine licensees.